

Missouri Essay Question 1
July 2002 Bar Examination
Administrative Law

Jimmy Chance is majority owner of a floating casino duly licensed by the Missouri Gaming Commission. As he has done in the three years that his casino has been open, Chance has a private party in one of the non-gaming rooms at the casino. Alcohol is served at this party and Chance drinks some wine at the party. Chance did not seek prior approval to serve alcohol at the private party, as required by Commission regulations.

As he is leaving the party, Chance notices a backup at the entrance to the casino as prospective gamblers await permission to board the floating casino. At this time, Gaming Commission rules allowed patrons to board only at designated “boarding times.” Chance, seeing frustration in the eyes of the potential customers of the casino, confronts Bob Stickler, the casino employee responsible for insuring that patrons “board” the casino only at the designated times. Stickler rejects Chance’s demand that the patrons be allowed on the casino before they get discouraged. Stickler explains to Chance that, even though Stickler thinks the rules are “silly,” he is simply trying to make sure that the casino complies with Commission rules and avoids fines. Chance explodes into a profanity-laced tirade about the need to serve the customers rather than worry about Commission rules. Stickler shouts back at Chance, and calls a security guard, who drags the enraged Chance away.

After the security personnel file a report with the Gaming Commission, the Commission cites and fines Chance for: (a) “misconduct” in violation of the statute governing disciplinary actions against gaming industry licensees for his profane outburst about Commission requirements; and (b) for consuming alcohol in a non-gaming section of the casino without prior approval.

Pursuant to Commission rules, Chance requests a hearing before the Commission to contest the citation and fine. At the hearing, Chance denies that he made the comments that Stickler attributes to him. Chance also testifies that he was unaware of the regulation requiring prior approval before alcohol may be consumed in the non-gaming areas of the casino.

After the hearing, the Commission makes a factual finding that Chance did make the profane comments about Commission rules during his confrontation with Stickler. The Commission also finds that the term “misconduct” as used in the statute applicable to the gaming industry requires an intention to discredit the Commission or its rules. Applying this standard,

the Commission finds that Chance's profane comments about the Commission rules constituted "misconduct." In addition, the Commission also finds that Chance violated the Commission regulation requiring prior approval before alcohol is consumed in non-gaming areas of the casino.

EACH OF THE FOLLOWING QUESTIONS IS OF EQUAL WEIGHT.

1. The Missouri gaming statutes themselves do not contain any provision for judicial review of the Commission's decision. What procedure is available to Chance to seek judicial review of the Commission's decision and what is the authority for that procedure?

2. Assume that Chance follows the appropriate procedure for obtaining judicial review. What standard of review should the circuit court apply to the Commission's determination of the legal requirements for "misconduct" under the state gaming statute? What standard of review should the circuit court apply to the Commission's factual finding that Chance made the statements attributed to him by Stickler?

3. What standard of review should the circuit court apply to the Commission's final determination that Chance had engaged in prohibited misconduct and had violated Commission rules?

4. How should the court decide Chance's argument that the fine for alcohol consumption is unjustified because he was not aware of the rule requiring prior approval before alcohol is consumed in non-gaming areas of the casino?

5. Assume the circuit court affirms the decision of the Commission and Chance appeals to the court of appeals. For the first time on appeal, Chance argues that the statute governing the conduct of gaming licensees violates his constitutional right to due process because the term "misconduct" used in the Commission statute fails to adequately inform him of the conduct for which fines may be assessed and therefore is unconstitutionally vague. How should the court of appeals dispose of this argument?

6. The Commission also cites and fines Stickler for "misconduct" for his characterization of Commission rules as "silly." Stickler immediately files a lawsuit in circuit court asking for a judgment prohibiting enforcement of the fine assessed against him by the Commission. On what basis may the Commission move to dismiss Stickler's lawsuit without addressing the merits of that lawsuit?

Missouri Essay Question 2
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Equitable Remedies

Joe is a professional athlete in California. Joe hears rumors he is about to be traded to a team in Missouri. Joe is so convinced of the impending trade, that he travels to Missouri to look at homes to purchase.

Joe looks at a home offered for sale by Mike. Joe tells Mike that he wants to buy Mike's home, but only if Joe is traded. Mike has read on popular sports web sites that Joe's trade is a virtual certainty. Mike does not want any contingencies in his sales contract. Mike has received offers from others for his home that contain no contingencies. However, Mike is star struck with the possibility of selling his home to a professional athlete. Mike believes Joe's trade is likely to occur, so he agrees to sell his home to Joe.

Neither Joe nor Mike uses a realtor or a lawyer. Mike fills in the blanks of a pre-printed form contract to describe his home, the amount Joe is paying and a closing date. The written contract does not include a provision making Joe's obligation to buy Mike's home contingent on Joe's trade. Mike delivers the contract to Joe. Joe signs the contract.

On the closing date, Joe refuses to buy Mike's home because he is not going to be traded to the team in Missouri after all. Mike sues Joe and seeks specific performance of the contract. Joe files a counterclaim against Mike and seeks reformation of the contract to reflect that Joe's obligation to buy Mike's home was contingent upon Joe being traded. Assume Missouri law governs.

1. Discuss Joe's liability to Mike for specific performance of the contract. In your discussion, address the requirements of a claim for specific performance of a contract and apply the facts to evaluate the likelihood of Mike's success.
2. Discuss Mike's liability to Joe for reformation of the contract. In your discussion, address the requirements of a claim for reformation of a contract and apply the facts to evaluate the likelihood of Joe's success.

Missouri Essay Question 3
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Missouri Civil Procedure

John and Sue House sued Jay D'Bugg for an allegedly negligent termite inspection he performed on their home at the time of purchase. A trial was set before Judge Clair D. Docket. At the pre-trial conference, D'Bugg's attorneys filed a Motion for Discovery Sanctions alleging that John and Sue House had failed to supplement their responses to two interrogatories:

18. Do you or your attorney have or have access to any written or recorded statement taken from any person concerning the occurrences set forth in your Petition?
19. Does any person other than you or your attorneys, have personal knowledge of the facts set forth in your Petition?

John and Sue House responded, "No. Not to the best of our knowledge and belief," to each of the interrogatories.

Two years after they answered the interrogatories, and 6 months before the trial, John and Sue videotaped Jay D'Bugg doing a termite inspection at the home of their neighbors, Rick and Debbie Smith. D'Bugg's attorneys argued in their Motion that John and Sue should have supplemented their earlier filed interrogatory answers to reveal the videotape. They also argued that the videotape was "wholly irrelevant" to any issue in the case. Judge Docket did not address the issue of whether the tape was admissible evidence but she agreed with D'Bugg's attorneys that plaintiff's possession of the tape should have been revealed in supplemental responses to the interrogatories, and dismissed John and Sue's lawsuit as a sanction for the alleged discovery abuse.

Questions:

1. Were John and Sue under any obligation to supplement their responses to interrogatories 18 and 19 under the facts of this case? Answer Yes or No.
2. Explain your answer to Question 1 above.
3. Under what circumstances must a party supplement answers to interrogatories?

4. Did Judge Clair D. Docket abuse her discretion when she dismissed John and Sue's lawsuit as a sanction for alleged discovery abuse under the facts of this case? Answer Yes or No.

5. Explain your answer to 4 above.

Missouri Essay Question 4
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Trusts

Q.1. Alvin Alumni was a lawyer and a generous benefactor of the “Bootheel College of Legal Knowledge” (“B.C.L.K.”), a small, public law school located in the town of Bootheel, Missouri, from which Alvin graduated. In Alvin’s Will, he created a Testamentary Trust that provided for all the income from the trust principal (several large investment accounts) to be paid to his children for their lifetimes. At the death of his children, the principal was to be distributed to “B.C.L.K.” to establish a memorial scholarship fund for economically disadvantaged law students. Alvin died in 1985. In the years following Alvin’s death, “B.C.L.K.” encountered serious financial problems, and ultimately closed in 1998. Two years later, the Board of Regents of “B.C.L.K.” re-opened the facility as the “Bootheel College of Paralegal Knowledge” (“B.C.P.K.”). As the new name suggests, the “B.C.P.K.” does not award law degrees; it provides instruction and training for paralegals. In 2002, the last surviving child of Alvin Alumni died.

Alvin’s Testamentary Trust did not provide for an alternate or contingent distributee of the remainder interest in the Trust principal. The Board of Regents of “B.C.P.K.” want the principal to create a memorial scholarship fund for economically disadvantaged paralegal students. Discuss whether the “B.C.P.K.” is entitled to the Trust principal. If “B.C.P.K.” is not entitled to the Trust principal, who will receive the investment accounts?

Q. 2. Lori Landowner owned over five thousand acres of farmland in Bootheel County, Missouri. She placed this farmland in an Irrevocable Intervivos Trust, with the direction that the Trustee was to pay her all the income from the farmland during her life, and then at her death to pay all the income to her two children, Tabitha and Tom, for their lives. At the death of both Tabitha and Tom, the Trust would terminate, and the Trustee was directed to distribute the farmland to the “issue” of Tabitha and Tom, in equal shares, free of Trust. The Trust indenture specifically stated that the purpose of the Trust was to provide for the support, maintenance, and financial needs of Lori, Tabitha, and Tom.

Lori died in 1992. At the time of Lori's death, Tabitha had one child, age thirteen. Tom had no children. Beginning in 1997, Bootheel County had a series of years during which bad weather and poor growing conditions resulted in record low crop yields. These low yields, unfortunately, coincided with near record low prices for crops. Consequently, the annual income generated by the Trust fell sharply. By 2002, Tabitha and Tom had had enough of farming, and they decided that they wanted to terminate the Trust and arrange for the sale of the farmland. The Trust income did not, in their estimation, meet their needs for financial support. Tabitha still has only one child, now age twenty-three. Tom also has a child, age three.

Can Lori's Trust be terminated as Tabitha and Tom desire? Explain why or why not. If the Trust can be terminated, explain how.